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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/070,069

03/04/2002

Catherine Mary Dolbear

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9255

7590

06/06/2005

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EXAMINER

RAO, ANAND SHASHIKANT

ART UNIT

PAPER NUMBER

2613

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/070,069

Applicant(s)

DOLBEAR ET AL.

Examiner

Andy S. Rao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 9-11 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendments*

1. As per the Applicant's instructions filed on 12/22/04, claim 4 has been canceled.
2. Applicant's arguments filed with respect to claims 1-3, 5-7, and 9-11 as filed on 12/22/04 have been fully considered but they are not persuasive.
3. Claims 1-3 remain rejected under 35 U.S.C. 102(b) as being anticipated by Wong, as was set forth in the Office Action of 8/16/04.
4. The Applicant presents one argument contending the Examiner's rejection of claims 1-3 under 35 U.S.C. 102(b) as being anticipated by Wong, as was set forth in the Office Action of 8/16/04. However, after a careful consideration of the argument presented, the Examiner must respectfully disagree and maintain the grounds of rejection against those claims, and further apply the reference as the basis for amended claims 5-7, and 9-11.

After summarizing the prosecution (Amendment of 12/22/04: page 4, lines 1-20), the Applicant argues that Wong fails to disclose that "peak signal to noise ratios of bidirectionally predicted pictures in an enhancement layer are determined with reference to peak signal to noise ratios of pictures in another layer..." as in the claims (Amendment of 12/22/04: page 4, lines 15-32; page 5, lines 1-6). The Examiner respectfully disagrees. While it is noted that the citation in question shows the ability of Wong to compute PSNRs of a frame based on different parts of the frame (i.e. background versus foreground), Wong discloses that since the method is directed towards the MPEG standard, this would inherently include the scalability that is discussed in conjunction with the disclosure of the MPEG-2 standard (Wong: column 1, lines 50-67; column 2, lines 1-2). The scalability of the MPEG-2 standard as implemented by Wong inherently has

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the lower resolution image as a base layer and higher resolutions being achieved through enhancement layer data. As such, the teaching of Wong's PSNRs with foreground and background now correlates to base/enhancement layer treatment, and reads on the claims in question.

A detailed action on claims 5-7, and 9-11 follows below.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 5-7, and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Wong.

Regarding claim 5, Wong wherein the peak signal-to-noise ratios are made similar (Wong: column 6, lines 50-67; column 7, lines 1-20)

Regarding claim 6, Wong discloses that the other layer is a wherein other layer is a base layer (Wong: column 2, lines 1-5: inherently included in the scalability function of MPEG-2), as in the claim.

Regarding claim 7, Wong discloses wherein characteristics of more than one picture (Wong: column 6, lines 15-25: noise mapping in I and P pictures) in another layer are considered (Wong: column 2, lines 1-5: scalability including an enhancement layer), as in the claim.

Regarding claim 9, Wong discloses wherein an average number of bits (Wong: column 4, lines 20-25) used to define a predicted picture (Wong: column 6, lines 15-30) and an average

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number of bits used to define a picture in the another layer (Wong: column 2, lines 1-5: scalability including an enhancement layer) are used to define a weighting value (Wong: column 6, lines 50-67; column 7, lines 1-38), as in the claim.

Regarding claims 10-11, Wong discloses an apparatus for implement the method (Wong: figure 3a) as a signal for transmission via a mobile communication system (Wong: column 1, lines 20-25), as in the claim.

#### ***Allowable Subject Matter***

7. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim 1.

Dependent claim 8 recites implementing the method of claim 1 with "...a first enhancement layer uses SNR scalability to produce enhanced pictures; and a second enhancement layer uses temporal scalability to produce enhanced pictures, based on temporal positions of pictures in the first lower enhancement layer..." is not obvious nor anticipated over the art of record. Accordingly, if finally rejected claims 1-7, and 9-11 are canceled, and claim 8 is rewritten as indicated above, the application would be placed in a condition for allowance.

#### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action applied against claims 5-7, and 9-11. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andy S. Rao whose telephone number is (571)-272-7337. The examiner can normally be reached on Monday-Friday 8 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris S. Kelley can be reached on (571)-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andy S. Rao  
Primary Examiner  
Art Unit 2613

ANDY RAO  
PRIMARY EXAMINER

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May 31, 2005